IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

Crl.Rev.Pet.No. 545 of 2000

CRA.215/1997 of ADDL. SESSIONS COURT, ALAPPUZHA
CC.112/1996 of JDUL.MAGISTRATE OF FIRST CLASS, RAMANKARI

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REVN. PETITIONER/APPELLANT/ACCUSED NO.1:

DHANANJAYAN, S/O NARAYANA PANICKER,
ASHA SADANAM, KIDANGARA MURI,
VELIYANAD.

BY ADV. SRI.P.VIJAYA BHANU
SMT.MINI JOHN PAREMALIL

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.R.P.No. 545 of 2000

ORDER

Petitioner is the first accused in C.C.No. 112/96 on the file of the Judicial First Class Magistrate's Court, Ramankary. He stood charge-sheeted by the Excise Inspector, Kuttanad Range in Crime No.93/95 for offences under Sections 55(a) and 56(b) of the Abkari Act along with the second accused, who is the licensee of the toddy shop. After trial, the learned Magistrate convicted the petitioner for offence under Section 55(a) of the Abkari Act and sentenced him thereunder to undergo rigorous imprisonment for six months and to pay a fine of Rupees one thousand and in default to undergo simple imprisonment for a term of three months. The second accused was convicted under Section 56(b) of the Abkari Act and was sentenced thereunder to pay a fine of Rupees two thousand

and in default of payment of fine, to undergo simple imprisonment for a period of three months.

2. Crl.A.No.215/97 filed by the petitioner before the Sessions Court, Alappuzha was dismissed, confirming the conviction and sentence passed against him by the trial court under Section 55(a) of the Abkari Act. Hence, this revision.

3. The allegation against the accused was that on 24.8.1995 at about 11 a.m. illicit arrack was found kept for sale in Toddy Shop bearing No.75/95 at Kidangara of Kuttanad Range, of which, the second accused was the licensee and the petitioner/ first accused was the Manager.

4. It is contended before me by the learned counsel for the revision petitioner that there is no evidence in the case that the petitioner was the Manager in charge of the toddy shop; that the search in the toddy shop was conducted not in accordance with law and therefore, the search is illegal; that two occurrence reports were filed in

the case and that, however, there is inordinate delay in producing the thondi before court. Apart from putting some questions to the Excise Inspector as to whether he has produced any record to prove the connection between the petitioner and the toddy shop, which has been denied by witnesses PWs 1, 2 and 5, no attempt at all has been made even to call for the attendance register and no challenge at all is made to the effect that the register maintained in the shop will show that somebody else was the Manger and not the petitioner. Even the mahazar shows that at the time of inspection, the person in management of the shop was the petitioner himself. PW2 has categorically said in cross-examination that at the time of inspection, the petitioner was engaged in sale of toddy and he has seen him receiving the cash in respect of sale of toddy. He further asserted that the petitioner/first accused was the person, who was vending toddy and in the management of the shop, at the time of inspection.

5. The contention that there is no search memo prepared in respect of the search conducted and that the search is illegal does not worth merit. PW2 has stated that though no search memo is prepared, there is a search list, though, however, that is not produced. It is worthy to note that it is not the case of the prosecution that on getting prior information they conducted the search in the shop. According to the Excise officials, they were conducting a routine inspection of the shop and it was then that the arrack kept in the jerry can within the toddy shop was detected. When the detection and seizure of arrack, unauthorisedly kept in the toddy shop, is only during the course of the routine inspection, preparation of search memo and search list is absolutely not necessary and the contention of the petitioner on that count is devoid of any merit.

6. It is true that there is delay in producing the seized arrack before court, in as much as the

seizure was effected on 24.8.1995 and the seized arrack was produced before court only on 19.3.1996. But, all the same, on behalf of the accused, no question was put to PWs 1, 2 and 5, who were the Excise officials in the matter of delay and it is only before this Court that such an argument is advanced. It is not that in any case when some delay is caused in producing the material object, the case has to end in acquittal. There may be ever so many reasons why it could not be produced in court in time. No question was put to the witnesses as to the delay in producing the material object and no prejudice is shown to have been caused to the petitioner by reason thereof. The contention that there are two occurrence reports, viz., Exhibits P2 and P3, is also unsound as Exhibit P2 is only a true copy of Exhibit P3 original occurrence report, certified by the Excise Inspector, Kuttanad Range. All the same, it is seen that in Exhibit P2 O.R. number is shown as

122/95 and in Exhibit P3 crime number is shown as 93/95. O.R.No.122/95 is in relation to the occurrence report under the Abkari Act, which when registered as crime is Crime No.93/95 of Kuttanad Range in Alappuzha Circle assigned. Hence, it is not a case where there are two occurrence reports of two crimes as contended by the counsel for the petitioner.

7. The chemical analysis report Exhibit P5 shows that ethyl alcohol was detected in the sample and that the sample liquid contained 20.15% of ethyl alcohol. Thus, the offence of keeping illicit arrack for sale in the toddy shop stands established. The conviction of the petitioner for offence under Section 55(a) of the Abakari Act is, hence, correct and is sustainable. The sentence awarded to the petitioner is only rigorous imprisonment for six months and a fine of Rupees five thousand and that is moderate and reasonable and it does not deserve to be interfered with.

In the result, confirming the conviction and sentence passed by the courts below against the petitioner, I dismiss this Crl.R.P.

15th January, 2007 (K.P.Balachandran, Judge)

tkv

K.P.balachandran, J.

Crl.R.P.No.545 of 2000

ORDER

15th January, 2007